ARIZONA SUPREME COURT

STATE OF ARIZONA, Appellant, v. VIVEK A. PATEL, Appellee.	No. CR–19–0366–PR Court of Appeals No. 1 CA–CR 18–0774 Maricopa County Superior Court No. LC2018–000192 Phoenix Municipal Court Complaint No. 14483182

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INTEREST OF AMICUS CURIAE

This case concerns the constitutionality of A.R.S. § 28–672(G), which limits the amount of restitution—to which a crime victim is constitutionally entitled—whenever a defendant is convicted of causing serious physical injury or death by a moving violation.

The Arizona Attorney General, as the State's chief legal officer, *see* A.R.S. § 41–192(A), has a manifest interest in ensuring that legislative enactments affecting restitution are authorized under the Victim's Bill of Rights ("VBR") enumerated in article II, § 2.1 of the Arizona Constitution. *See Fund Manager, Pub. Safety Pers. Ret. Sys. v. Corbin*, 161 Ariz. 348, 354 (App. 1988) ("as 'chief legal officer of the state,' … the Attorney General [] has a duty to uphold the Arizona and United States Constitutions"). Additionally, the Attorney General's Office of Victim Services enforces victims' rights laws, resolves victims' complaints, and participates in collaborative efforts with courts and other state, county, and municipal agencies to promote and facilitate justice for Arizona's crime victims.

This brief is filed pursuant to Rule 31.15(b)(1)(B) of the Arizona Rules of Criminal Procedure and this Court's March 3, 2020, order.

ARGUMENT

This Court granted review on the following issue: Does A.R.S. § 28–672(G) violate the Victims' Bill of Rights, Ariz. Const. art. [II], § 2.1(A)(8) by capping victim restitution?

As discussed below, A.R.S. § 28–672(G) violates § 2.1(A)(8) of the VBR. This conclusion is compelled by the text and purpose of the VBR and this Court's prior opinions interpreting the scope of the Legislature's authority under the VBR "to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims[.]" ARIZ. CONST. art. II, § 2.1(D). Because A.R.S. § 28–672(G) is facially invalid as a violation of article II, § 2.1(A)(8), it is an unlawful exercise of legislative authority under article II, § 2.1(D).[1]

I. The Legislature Lacks Authority To Cap Restitution In A Criminal Case Because A Cap Violates Crime Victims' Constitutional Right To Restitution Guaranteed Under Article II, § 2.1(A)(8)

The VBR was added to our state constitution in 1990 when Arizona's electorate approved Proposition 104, a voter-initiative measure. *See* ARIZ.

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[1] As the State notes, at the time of Patel's conviction in 2016, A.R.S. § 28–672(G) imposed a $10,000 cap on restitution. (See Response to Petition for Review at 4.) The Legislature recently amended the statute by increasing the restitution cap to $100,000, *see* A.R.S. § 28–672(G) (2018), but this amendment is immaterial to the analysis.

CONST. art. II, § 2.1, hist. note. Ever since, "[c]rime victims' rights in Arizona [have been] protected by our constitution, by statute, and by court rule." *State v. Nichols*, 224 Ariz. 569, 571, ¶ 7 (App. 2010); *see generally State v. Roscoe*, 185 Ariz. 68, 70 (1996) (providing historical summary of victims' rights in Arizona).

As relevant here, a defendant's obligation to pay restitution to the victim(s) of his crime in a criminal case is "created by the VBR[.]" *State v. Cota*, 234 Ariz. 180, 184, ¶ 12 (App. 2014); *see* ARIZ. CONST. art. II, § 2.1(A)(8) (establishing crime victims' right "[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury"); ARIZ. CONST. art. II, § 2.1(C) (defining "[v]ictim" as "a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused"). And the Legislature's authority to enact a statute affecting restitution must comply with the VBR. *See State v. Murray*, 194 Ariz. 373, 375, ¶ 6 (1999) (emphasizing the Legislature's plenary power to change substantive law must be exercised "[w]ithin constitutional limits"); *State v. Hansen*, 215 Ariz. 287, 290, ¶ 12 (2007) (stating the Legislature's "power to promulgate rules under the VBR is not unlimited").

The parties here disagree about whether A.R.S. § 28–672(G)—which caps the amount of restitution in a criminal case—is an appropriate exercise of VBR-granted legislative authority. (See Patel's Petition for Review at 9–10 [arguing subsection (D) of the VBR allows the Legislature "to implement the VBR by enacting 'substantive and procedural laws'"]); State's Response to Petition for Review at 8 [arguing "[t]he Legislature is prohibited from enacting legislation that either reduces or eliminates rights guaranteed to victims"].) The State is correct. Neither the text nor the purpose of the VBR authorizes the Legislature to mandate a statutory limit on the amount of restitution that can be awarded to a crime victim in a criminal case. And this Court's prior opinions interpreting the scope of the Legislature's authority under § 2.1(D) of the VBR bolsters this conclusion.

A. The Plain Language of The VBR Does Not Authorize A.R.S. § 28–672(G)'s Cap on Restitution

The court of appeals correctly rejected Patel's argument that the statutory cap at issue here is a constitutional exercise of legislative power under article II, § 2.1(D) of the VBR. *State v. Patel*, 247 Ariz. 482, ¶ 13 (App. 2019). "[T]o determine the meaning of the VBR and serve its purpose, [courts] look first to its plain language[.]" *State v. Lee*, 226 Ariz. 234, 238, ¶ 9 (App. 2011) (citing *Knapp v. Martone*, 170 Ariz. 237, 239 (1992)); *see also Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) (to determine the meaning of a constitutional

provision, courts must determine "the intent of the electorate that adopted it").
"If the language [of the provision] is clear and unambiguous, [courts] generally must follow the text of the provision as written." *Jett*, 180 Ariz. at 119.

Here, the full text of article II, § 2.1(D) states:

> The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.[2]

ARIZ. CONST. art. II, § 2.1(D).

Thus, the VBR grants the Legislature authority to "define, implement, preserve *and* protect the rights guaranteed to victims by this section[.]" *Id.* (emphasis added). The electorate's use of the word "and" is significant; it means that any legislative enactment must satisfy the entire clause. *See Judd v. State*, 41 Ariz. 176, 185–86 (1932) (holding "the conjunctive was correctly employed" in a jury instruction defining insanity because the word "and" means that "both conditions must be found to exist before the jury can find the accused to be sane"); *de la Cruz v. State*, 192 Ariz. 122, 125, ¶ 11 (App. 1998) (observing that the conjunction "and" requires interpretation of the two words

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[2] As discussed *infra* (see Section II), the last clause of this provision is not at issue in this case, despite Patel's reliance on other statutes that govern restitution in the juvenile context.

or phrases in combination); *Ring v. Taylor*, 141 Ariz. 56, 70 (App. 1984) (the word "and" is a "conjunction connecting words or phrases expressing the idea that the latter is to be added or taken along with the first"), *superseded by statute as recognized in State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 295 ¶ 4 n.3 (App. 2014).

Accordingly, the Legislature cannot "define" a constitutional right by limiting the scope of that right; doing so would not "preserve and protect" victims' rights. *See* ARIZ. CONST. art. II, § 2.1(D); *see also State v. Lamberton*, 183 Ariz. 47, 50 (1995) ("[I]mplementing statutes and rules cannot eliminate or narrow rights guaranteed by the state constitution"); *Lee*, 226 Ariz. at 237, ¶ 8 (constitutional provisions in the VBR "determine the scope of a victim's rights, because neither the [L]egislature nor court rules can eliminate or reduce rights guaranteed by the VBR"); *State ex rel. Thomas v. Klein*, 214 Ariz. 205, 209, ¶ 15 (App. 2007) (holding the Legislature's statutory definition of "criminal offense" "unconstitutionally limits the categories of victims protected by the [VBR]" and reasoning that "the Legislature does not have the authority to restrict rights created by the people through constitutional amendment"). *Cf. State v. Maestas*, 244 Ariz. 9, 13–14, ¶¶ 19–23 (2018) (holding statute criminalizing AMMA-compliant possession or use of marijuana on public

college and university campuses "plainly does not further the [] purpose" of the Arizona Medical Marijuana Act").

But that is precisely what the Legislature did here. The statutory cap on restitution in A.R.S. § 28–672(G) diminishes the constitutional right granted in subsection (A)(8), i.e., a victim's right "[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury." ARIZ. CONST. art. II, § 2.1(A)(8); *see also State v. Barrs*, 172 Ariz. 42, 43 (App. 1992) ("The right to restitution belongs to the victim."). Because a crime victim's right to restitution is triggered by "criminal conduct that caused the victim's loss or injury[,]" *see* ARIZ. CONST. art. II, § 2.1(A)(8), it is contrary to the VBR to impose a limit on the amount that victims can recover because the criminal conduct still "cause[s]" the victim's loss or injury under subsection (A)(8). *See Town of Gilbert Prosecutor's Office v. Downie ex rel. Cty. Of Maricopa*, 218 Ariz. 466, 468, ¶ 7 (2008) (noting that "Arizona's criminal code implements th[e] constitutional guarantee" under § 2.1(A)(8) "by requiring 'the convicted person to make restitution to … the victim of the crime … in the full amount of the [victim's] economic loss") (citing A.R.S. § 13–603(C)).

The "criminal conduct" here, within the meaning of article II, § 2.1(A)(8), is Patel's commission of causing serious physical injury by a

moving violation—a class 3 misdemeanor. *See* A.R.S. § 28–672(A), (I) (2016); *see also* A.R.S. § 13–601 (classifying criminal offenses as misdemeanors and felonies); A.R.S. § 28–672(I) (2018) (classifying the offense as a class 1 misdemeanor). To be sure, this offense is a "strict liability offense" that does not require the State to prove that the defendant acted with any culpable mental state. *See Phoenix City Prosecutor's Office v. Nyquist*, 243 Ariz. 227, 230–31, ¶¶ 8–11 (App. 2017). But the lack of a *mens rea* element in the offense does not affect Patel's separate obligation, imposed by the VBR, to pay restitution to the victim. *See State v. Wilkinson*, 202 Ariz. 27, 30, ¶ 14 (2002) (reasoning that "the conduct causing damage need not be an element of the crime for which the defendant is convicted to make the loss restitution-eligible"; instead, "[t]he test is whether particular criminal conduct directly causes the victim's loss"); *see also* A.R.S. § 13–202(B) (allowing criminal statutes to define offenses without requiring proof of a culpable mental state); *State v. Parker*, 136 Ariz. 474, 475 (App. 1983) (A.R.S. § 13–202 applies to Title 28 offenses).

Patel's assertion that his offense is "essentially a civil traffic offense" simply lacks support in the law. (See Petition for Review at 11.) Because a violation of A.R.S. § 28–672(A) is a criminal offense, victims of this offense are entitled under the VBR to full restitution when the conduct "cause[s] the

victim's loss or injury." ARIZ. CONST. art. II, § 2.1(A)(8). This result is consistent with one of the general purposes of Arizona's Criminal Code: "[t]o proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests[.]" A.R.S. § 13–101(1).

As the court of appeals reasoned, "a cap" on restitution does not "in any way advance victims' [constitutional] right[] to restitution." *Patel*, 247 Ariz. at ¶ 13; *cf. Roscoe*, 185 Ariz. at 73 (reasoning that the VBR "grants to the legislature the authority to define the rights created therein, not the power to redetermine who is entitled to them"). Section 28–672(G) therefore violates the plain language of article II, § 2.1(A)(8).

B. The Restitution Cap Established By A.R.S. § 28–672(G) Contravenes the Reparative And Rehabilitative Purposes Of Restitution

Even assuming the plain language of the VBR was ambiguous, the underlying purposes of granting victims a right to restitution in subsection (A)(8) of the VBR also shows that the Legislature cannot cap the amount of restitution to which a crime victim is constitutionally entitled. *See Jett*, 180 Ariz. at 119 (when ambiguity in a constitutional provision exists, courts "may consider the history behind the provision, the purpose sought to be accomplished, and the evil sought to be remedied").

Unlike other restitution statutes, the cap in A.R.S. § 28–672(G) frustrates the purposes of restitution. Indeed, this Court has noted that "[t]o implement the important constitutional right of crime victims to recover prompt restitution," the Legislature enacted a series of statutes, including A.R.S. § 13–603 and A.R.S. § 13–804, which "define the circumstances under which and the extent to which a court may award restitution." *Wilkinson*, 202 Ariz. at 28, ¶ 6. For example, a victim is entitled to restitution "in the full amount of the economic loss as determined by the court," A.R.S. § 13–603(C), and "economic loss" includes "any loss incurred by a person as a result of the commission of an offense[,]" A.R.S. § 13–105(16). However, the Legislature clarified that "[e]conomic loss does *not* include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages." A.R.S. § 13–105(16) (emphasis added).

"By limiting restitution to those damages that flow directly from a defendant's criminal conduct, the legislature focused upon the primary purposes of restitution: reparation to the victim and rehabilitation of the offender." *Wilkinson*, 202 Ariz. at 30, ¶ 13. The Legislature's limitation in A.R.S. § 13–105(16) is a constitutional exercise of legislative authority under article II, § 2.1(D) because this limitation "define[s], implement[s], preserve[s] and protect[s]" the constitutional right to restitution guaranteed to crime

victims under subsection (A)(8). *See* ARIZ. CONST. art. II, § 2.1(D). And the definition of "economic loss" in A.R.S. § 13–105(16) is consistent with the reparative and rehabilitative purposes of restitution.

Here, in contrast, the limitation on the *amount* of restitution established in A.R.S. § 28–672(G) frustrates the purposes of restitution. It does not make the victim whole or rehabilitate the offender. In this case, for example, the victim incurred more than $61,000 in expenses related to his severe injuries sustained in the collision that Patel caused by failing to yield to oncoming traffic. (See State's Response to Petition for Review at 1–2.) Yet the $10,000 cap would defeat the purposes of making the victim whole. The limitation therefore frustrates the purpose underpinning the constitutional guarantee of restitution in article II, § 2.1(A)(8). *Cf. State v. Howard*, 168 Ariz. 458, 459–60 (App. 1991) (rejecting defendant's proposed construction of a statute, which would limit restitution to a victim's economic loss incurred prior to sentencing, where this interpretation would defeat the purpose of making victims whole because a victim suffering from "major injuries" may not have incurred all expenses caused by the defendant by the time of sentencing).

In its Amicus Brief, the Arizona Attorneys for Criminal Justice ("AACJ") argue that "Arizona's restitution scheme is punitive, not rehabilitative," and assert that Arizona case law has "failed to recognize that

the law of restitution has greatly evolved from 'rehabilitative' to punitive while also reducing constitutional protections for defendants designed to test the accuracy of restitution requests." (AACJ Amicus Brief at 2–3.) The AACJ is mistaken. As the State argues, "courts have consistently held that the purpose of restitution is to make the victim whole." (State's Response to Petition for Review at 6.)

Moreover, criminal defendants are generally entitled, under due process principles, to contest evidence supporting a restitution award. *See State v. Quijada*, 246 Ariz. 356, 364–66, ¶¶ 23–29 (App. 2019); *State v. Steffy*, 173 Ariz. 90, 93 (App. 1992) ("A defendant has a due process right to contest the information on which the amount of a restitution order is based."). Although "[a] defendant's due-process protections must not be converted into tools to subject victims to unnecessary and potentially injurious court proceedings … due process requires that the defendant be given the opportunity" to challenge evidence when "events or circumstances call the veracity or accuracy of evidence concerning restitution into doubt[.]" *Quijada*, 246 Ariz. at 366, ¶ 29.

This Court should reject the AACJ's assertions that case law has transformed the dual purposes of restitution into a punitive purpose and "have all but abandoned fundamental fairness" in determining restitution. (See AACJ Brief at 2–10.) Arizona courts have repeatedly balanced victims' constitutional

rights under the VBR with defendants' constitutional rights in a manner consistent with the reparative and rehabilitative purposes of restitution. *See, e.g.*, *Town of Gilbert*, 218 Ariz. at 469, ¶ 13 ("Restitution is not meant to penalize the defendant; that function is served by incarceration, fines, or probation … Restitution therefore should not compensate victims for more than their actual loss."); *State v. Guadagni*, 218 Ariz. 1, 7–8, ¶¶ 20–24 (App. 2008) (vacating a restitution order upon concluding the defendant's rights to counsel and due process were violated); *State v. Iniguez*, 169 Ariz. 533, 537 (App. 1991) (purpose of restitution is to "fully compensate the victim" and not to go "beyond full compensation and confer a windfall").

C. The *Brown/Hansen* Considerations Further Confirm That A.R.S. § 28–672(G) Is Unconstitutional

Finally, in addition to interpreting the VBR's text and considering the purposes of restitution as set forth above, this Court could apply the three *Brown/Hansen* considerations to evaluate the Legislature's authority under the VBR to enact A.R.S. § 28–672(G).

In *State v. Reed*, for example, this Court recently addressed whether the Legislature had rulemaking authority under the VBR to enact a statute that required dismissal of a pending appeal upon a convicted defendant's death. 248 Ariz. 72 (2020). In holding that the Legislature lacked authority to enact the statute under the VBR, the Court utilized the three considerations laid out

in *State ex rel. Napolitano v. Brown*, 194 Ariz. 340 (1999), and *State v. Hansen*, 215 Ariz. 287 (2007). *Reed*, 248 Ariz. at ¶¶ 22–27. These three considerations are: (1) "whether the statute 'affects rights unique and specific to victims' as enumerated in the VBR; (2) whether the legislature intended to exercise its VBR rulemaking authority; and (3) whether the statute actually furthers VBR-created rights that are unique and peculiar to victims." *Id.* at ¶ 22 (quoting *Hansen*, 215 Ariz. at 290–91, ¶¶ 13–16).

The Legislature's rulemaking authority under the VBR to enact procedural laws derives from the same provision that grants the Legislature authority to enact substantive victims' rights laws—article II, § 2.1(D) of the Arizona Constitution. The *Brown/Hansen* considerations are therefore relevant to assess the constitutionality of any substantive or procedural law that affects victims' rights. Applying the *Brown/Hansen* considerations here, the Legislature lacked authority to enact A.R.S. § 28–672(G). First, it is firmly established that under the VBR, restitution is a right that is unique and specific to victims. *See Reed*, 248 Ariz. at ¶ 24 ("Subsection (A)(8)'s declaration that victims must 'receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury' is unique and peculiar to victims.") (citing *Hansen*, 215 Ariz. at 290, ¶ 14, and *Brown*, 194 Ariz. at 343, ¶ 12). Second, the plain language of A.R.S. § 28–672(G) implies

that the Legislature intended to exercise its authority under the VBR because this statute purports to cap the amount of restitution.

Third, and most importantly, A.R.S. § 28–672(G) fails to "actually further[] VBR-created rights that are unique and peculiar to victims." *See Reed*, at ¶ 22. As discussed above (see *supra*, Section I(A)), a cap on restitution violates the text of subsection (A)(8). And because one purpose of restitution under the VBR is to compensate victims for economic losses, a cap on restitution impermissibly violates victims' constitutional right to restitution under the VBR. (See *supra*, Section I(B).)

Accordingly, application of the *Brown/Hansen* considerations highlights the unconstitutionality of A.R.S. § 28–672(G).

II. The Cap on Restitution That Applies In Juvenile Proceedings Does Not Alter the Outcome

In his supplemental brief, Patel focuses his attention on the "partial restitution directive of A.R.S. § 8–344(A)" and the corresponding $10,000 limit on restitution established by A.R.S. § 12–661, contending that these statutes "likewise impose[] a cap of $10,000, same as in the statute under consideration." (See Defendant/Petitioner's Supplemental Briefing at 1–2.) Patel's reliance on these other statutes is misplaced, however, for two reasons. First, this Court did not grant review to consider the constitutionality of A.R.S. § 8–344(A) or A.R.S. § 12–661, which do not apply in this case. Second, as

the State notes, the scope of the Legislature's authority under the VBR to enact statutes in juvenile proceedings is different. (State's Supplemental Brief at 12.) Consequently, "it is not instructive to look at juvenile statutes when determining whether [A.R.S. §] 28–672(G) is unconstitutional under the VBR." (*Id.*) In other words, a conclusion that the Legislature lacked authority to enact A.R.S. § 28–672(G) under the VBR does not have any bearing on whether the Legislature has authority to enact other statutes that affect restitution in juvenile proceedings.

A. Neither A.R.S. § 8–344 Nor A.R.S. § 12–661 Are Applicable

As noted above, this Court granted review on a specific and narrow issue: whether "A.R.S. § 28–672(G) violate[s] the Victims' Bill of Rights, Ariz. Const. art. [II], § 2.1(A)(8), by capping victim restitution[.]" Patel suggests that this Court should consider two other statutes—A.R.S. § 8–344 and A.R.S. § 12–661—which he contends are analogous to A.R.S. § 28–672(G). (See Defendant/Petitioner's Supplemental Brief at 1–2.) But these statutes operate in entirely different circumstances than A.R.S. § 28–672(G) and have no application here.

Section 8–344 governs "[r]estitution payments" whenever a juvenile is adjudicated delinquent. This statute provides in relevant part:

> A. If a juvenile is adjudicated delinquent, the court, after considering the nature of the offense and the age, physical and

> mental condition and earning capacity of the juvenile, shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died.
>
> ...
>
> C. In ordering restitution pursuant to subsection A of this section, the court may order one or both of the juvenile's custodial parents to make restitution to the victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died. The court shall determine the amount of restitution ordered pursuant to this subsection, except that the amount shall not exceed the liability limit established pursuant to § 12–661.

A.R.S. § 8–344(A), (C). Section 12–661(B), in turn, provides that "[t]he joint and several liability of one or both parents or legal guardian having custody or control of a minor under this section shall not exceed ten thousand dollars for each tort of the minor."

Patel, however, is not a juvenile who was adjudicated delinquent. Notably, the Arizona Constitution confers broader authority to the Legislature to "enact substantive and procedural laws regarding all proceedings and matters" affecting juveniles. *See* ARIZ. CONST. art. IV, Part 2, § 22 ("In order to preserve and protect the right of the people to justice and public safety, and to ensure fairness and accountability when juveniles engage in unlawful conduct, the legislature, or the people by initiative or referendum, shall have the authority to enact substantive and procedural laws regarding all

proceedings and matters affecting such juveniles."); *see also* ARIZ. CONST. art. IV, Part 2, § 22(1) ("Every juvenile convicted of or found responsible for unlawful conduct shall make prompt restitution to any victims of such conduct for the injury or loss.").

In light of these constitutional provisions that apply *only* to juvenile proceedings, this Court need not, and should not, address the constitutionality of A.R.S. § 8–344 or A.R.S. § 12–661.[3]

B. There Is No Tension Between A.R.S. § 28–672(G) And The Restitution Cap Applicable In Juvenile Proceedings

For similar reasons, the VBR itself does not support a conclusion that the Legislature's power to enact restitution statutes in the juvenile context is the same as its power to enact restitution statutes in criminal cases. In fact, the VBR expressly states otherwise. Under § 2.1(D), the Legislature has "the authority *to extend* any of these rights to juvenile proceedings." ARIZ. CONST. art. II, § 2.1(D) (emphasis added).

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[3] Patel also argues that A.R.S. § 13–809(B) "exempts A.R.S. § 28–672 entirely from the 'full' restitution requirements of A.R.S. §§ 13–603(C)/13–804(B)." (See Defendant/Petitioner's Supplemental Brief at 5.) Not so. The plain language of A.R.S. § 13–809(B) provides that it "does not apply to traffic offenses," and lists several exceptions, which do not include A.R.S. § 28–672. Patel's argument appears to be based on the flawed premise that his offense is a simple "traffic offense." As discussed above, a violation of A.R.S. § 28–672 in 2016 was a class 3 misdemeanor. *See* A.R.S. § 28–672(I) (2016).

The Legislature enacted "the statutes governing victims' rights in juvenile cases, A.R.S. §§ 8–381 to –419[,]" under the authority granted in § 2.1(D) of the VBR. *In re Alton D.*, 196 Ariz. 195, 198, ¶ 12 & n.5 (2000). Because of this arguably broader grant of authority to enact victims-rights statutes in juvenile proceedings, it is inappropriate to consider those statutes to evaluate the scope of the Legislature's authority to enact A.R.S. § 28–672(G), a statute that apples in a criminal prosecution. *See id.* at 198, ¶ 12 & n.6 (emphasizing that "[t]he statutes governing restitution requests in criminal actions vary from those governing such requests in juvenile actions" and declining to consider cases that "involve adult criminal actions" in reviewing the statutes governing juvenile proceedings).

This Court should therefore decline Patel's invitation to find a conflict between A.R.S. § 28–672(G) and restitution statutes that apply in juvenile proceedings. No conflict exists.

CONCLUSION

The court of appeals correctly held that the Legislature lacked authority under the VBR to enact A.R.S. § 28–672(G). This Court should issue an opinion holding that any statute capping restitution in a criminal case violates victims' constitutional right to restitution under subsection (A)(8) of the VBR.

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Respectfully submitted this 7th day of April, 2020.

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